Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/10018/2012

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination sent**
on 11 July 2013	**on 17 July 2013**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NHLANHLA NDEBELE

Respondent

For the Appellant: Mr A Mullen, Senior Home Office Presenting Officer
For the Respondent: Mrs F Farrell, of P G Farrell, Solicitors

DETERMINATION AND REASONS

1. This determination refers to parties as they were in the First-tier Tribunal.

2. The SSHD appeals against a determination by First-tier Tribunal Judge Doyle, dated 14 December 2012, allowing the appellant's appeal against refusal of recognition as a refugee from Zimbabwe.

3. The issues raised in the application for and grant of permission are whether the judge erred in finding that the appellant, although not a credible witness, was entitled as a political neutral to protection on the authorities of *RN* [2008] UKAIT 00083 and *RT* [2012] UKSC 38, and whether the judge failed to have regard to the respondent's case on change of circumstances and on absence of risk in the appellant's home area, Bulawayo.

4. Mr Mullen submitted that although the judge referred briefly at paragraph 15 (o) to the more recent background evidence cited in the refusal letter, he did not in fact engage with it. That evidence showed that irrespective of time spent in the UK, an appellant from Matabeleland with no political profile was at no risk of a "loyalty challenge" or of persecution. The appeal should have been dismissed on the evidence which was before the judge. The matter would be even clearer on remaking the decision as at today's date, because applying *CM* (EM Country Guidance; Disclosure) Zimbabwe CG [2013] UKUT 00059 (IAC) the appeal would have no prospects of success.

5. Mrs Farrell submitted that at paragraph 15 (o) the judge did consider current evidence, and that he was entitled to find it insufficient to depart from findings based on *RN* and *RT*. She acknowledged that if the decision did fall to be remade, the appellant would be in difficulty in bringing himself within any risk category, in light of *CM*.

6. I reserved my determination.

7. The judge at paragraph 15(n) said:

> I therefore find placing reliance on *RT* and *RN* that because the appellant has been in the UK for almost 11 years and is a failed asylum seeker and because it is most likely he would be viewed as politically neutral, he cannot demonstrate support for Zanu PF. He therefore faces a real risk of persecution.

8. The judge there relies upon *RT* and *RN* as if that could be done without regard to changes in the background evidence.

9. The judge does go on at paragraph 15(o) to refer to more recent information:

> The respondent relies heavily on the most recent background information … the background information does not say that physical violence is at an end in Zimbabwe. The background evidence says there has been a diminution in the number of politically motivated attacks, but says those politically motivated attacks, and the generalised violence against those not openly aligned with Zanu-PF, continue. The situation may not be as violent as … in 2008 but the background information confirms that politically motivate[d] violence continues and that Zimbabwe is in the grips of a repressive regime … Were the background information to indicate the physical violence was at an end (& it does not) and that the methods of the existing regime had been eradicated then there might be some force in the respondent's argument. The flaw in the respondent's argument is to say that the reduction of instances of violence and abuse of

power amounts to safety, when the threat of violence and persecution actually persists.

10. Paragraph 15 (o) reads as if the judge had already reached his final conclusion, and as if the burden was on the SSHD rather than the appellant. In assessing the background evidence it did not matter much where the burden lay, but the paragraph also reads as if the judge was incorrectly applying too high a test to the argument that there was no real risk to the appellant on return to Bulawayo. It was open to the judge to decide otherwise, but only on the basis of evidence reasonably leading to the contrary conclusion. The judge's references to the evidence are scanty, and are subject to erroneous views of where the burden lay and of the standard required. The overlooked analysis in the respondent's refusal letter, on the other hand, was quite detailed and thorough.

11. Those are errors fundamental to the decision, so it cannot stand.

12. On the evidence before the FtT, the decision should have been to the contrary. Any shade of doubt is removed by *CM*, to the effect that the guidance given in *EM* as at the end of January 2011 was not vitiated by any error, and did not require to be revisited except in the light of the *RT* principles. Such amendment as was made does not assist the appellant, particularly as he is from Bulawayo. *EM* held (headnote 1) that there was significantly less politically motivated violence in Zimbabwe compared with the situation considered in *RN*, and that in general the return of a failed asylum seeker from the UK with no significant MDC profile would not result in that person facing a real risk of having to demonstrate loyalty to Zanu-PF. *CM* also refers to later country information (not country guidance) but none of it assists the appellant.

13. The determination of the FtT is **set aside**. The following decision is substituted: the appeal, as originally brought by the appellant to the FtT, is **dismissed**.

14. No order for anonymity has been requested or made.

16 July 2013
Judge of the Upper Tribunal